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PATENT
09/900,808



**In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences**

In re Application of: SHACKLEE, Franky Lee
Serial No.: 09/900,808
Filing Date: July 6, 2001
Group Art Unit: 3727
Examiner: S. J. Castellano
Title: AMMUNITION SHIPPING AND STORAGE CONTAINER
AND METHOD

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Dear Sir:

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I hereby certify that the attached Reply Brief to Examiner's Answer (6 pages) filed in triplicate, a Baker Botts return post card (1 post card) and this Certificate of Mailing are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on this 16th day of March, 2004 and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Dear Sir:

REPLY BRIEF

Appellant appealed to this Board from the decision of the Examiner, contained in a final Office Action mailed July 3, 2003, finally rejecting Claims 24-26, 28-37, and 43-47 and the Advisory Action mailed September 12, 2003. An Appeal Brief was filed December 3, 2003. Appellant respectfully submits this Reply Brief in response to the Examiner's Answer mailed on January 16, 2004.

REPLY

Appellant's Appeal Brief sets out in detail why the claims under appeal are allowable and why the Examiner's final rejection of these claims should therefore be reversed. The following discussion focuses primarily on the specific points addressed in the Examiner's Answer.

102 REJECTION

A. Fischer does not disclose, teach, or suggest a first flange that "extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug."

Claim 24 is directed to a storage container comprising a storage vessel having "an access opening at one end." A first flange extends from an outer surface of the storage vessel "at a location between the access opening and the stacking lug." Thus, the location of the access opening is clearly defined as "at one end" of the storage vessel. The location of the first flange, on the other hand, is between the access opening (which is at the "one end" of the storage vessel) and the stacking lug. In other words, the first flange is located between the end of the storage vessel (where the access opening is) and the stacking lug. *Fischer* does not disclose, teach or suggest each of these limitations.

The Examiner's Answer relies upon an analysis of which "elements" of Claim 24 can or cannot be "touched", in support for the rejection of Claim 24. *See Examiner's Answer, Page 7, first full paragraph.* However, whether or not the "access opening" of Claim 24 can be touched, it most certainly can and does have a location, which is "at one end" of the storage vessel. The element of *Fischer* that the Examiner identifies as a "first flange" is the "outwardly curled end edge of tube 2." *Id.* However, the curled end edge of tube 2 is at the end of the storage container of *Fischer*, and the access opening is at the end of the storage vessel in *Fischer*. *See Fischer, Figures 2 and 5.* Since these elements essentially share a location, one cannot be between the other, and the stacking lug. Thus, Claim 24 is patentably distinguishable from *Fischer*.

B. Fischer does not disclose, teach, or suggest "the first flange being sized to cooperate with a corresponding second flange."

The Examiner's Answer contends that "[i]t is clear from Fig. 5 that the first flange (the outwardly curled end edge of tube 2) not only cooperates but mates or engages with at least the ring seal 25 and cooperates with a skirt or flange extending perpendicularly from the flat face of lid 6." *See Examiner's Answer, Page 8, first paragraph.* First of all, Applicant respectfully contends that a "ring seal" is not a flange, by any definition of the word. For this reason, Applicant is confused regarding why the Examiner includes this argument. To the extent that the Examiner considers a "ring seal" to be a "flange", Applicant respectfully disagrees.

The Examiner's Answer is not clear as to what the Examiner regards as the "skirt or flange" that allegedly extends "perpendicularly from the flat face of lid 6" of Figure 5. The Examiner also contends that the outwardly curled end edge of tube 2 cooperates with this "skirt or flange." After a thorough review of Figure 5, Applicant fails to see any "skirt or flange" that extends from lid 6 and cooperates with the outwardly curled end edge of tube 2.

Figure 2 of *Fischer*, on the other hand, does include a skirt that extends from lid 6. Applicant respectfully contends that this skirt is either omitted from Figure 5, or simply not shown, for purposes of clarity with regard to the rest of the features. There is nothing illustrated in Figure 2 or Figure 5 to suggest that the skirt cooperates with the curled end edge of the storage vessel, and no cooperation is required for operation of the container of *Fischer*. For example, the curled end edge of the storage container may engage the flat portion of lid 6, and the skirt may completely overlap the curled end edge of the storage container.

C. Fischer does not disclose, teach, or suggest "a generally rectangular first stacking lug being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein."

Applicant relies on the arguments set forth in Applicant's Appeal Brief, regarding these rejections. Applicant also notes that the Examiner's Answer includes alleged definitions of "cylindrical" and "tubular", as well as their respective, alleged claim scopes that rely on such definitions, with no support for those definitions.

103 REJECTION OF FISCHER IN VIEW OF ROCHER

Applicant relies on the arguments set forth in Applicant's Appeal Brief, regarding these rejections. Furthermore, Applicant respectfully contends that these rejections are improper because: (i) *Fischer* teaches away from the proposed combination, (ii) the proposed combination would render *Fischer* unsatisfactory for its intended purpose, and change the principle of operation of *Fischer*; and (iii) there is no suggestion or motivation to combine the references in the manner proposed by the Examiner.

Applicant is unsure precisely how the Examiner proposes to combine ring 19 of *Rocher*, with the teachings of *Fischer*. For the purposes of this argument, Applicant will assume that the Examiner intends to provide ring 19 over the curled end edge of tube 2, and the "skirt" that extends from lid 6. As illustrated and described in *Rocher*, ring 19 is actually a "clamping ring" that engages the lid and the container. Accordingly, as the clamping ring is tightened, the lid is held in place on the container. In order to disengage the lid and clamping ring, the lid and clamping ring employ aligned sealing ribs and grooves. Thus, the lid must be removed by separating it from the container uniformly. The sealing ribs and grooves would not function properly if the lid and/or the clamping ring were "hinged" to the container (i.e., rotated away, rather than being drawn back uniformly).

Fischer, on the other hand, is entirely directed to containers having attached, hinged lids, and expressly teaches away from the combination proposed by the Examiner. For example, the Background of *Fischer* discusses problems with the prior art that employed "a loose lid which is detachably fastened to the open front end of the container tube by means of a clamping ring. See *Fischer, Background*. *Fischer* goes on to state "ammunition containers

of this design cannot be stacked; baskets or boxes with considerable additional weight and corresponding "dead" volume are required for transport [of the lids]." Thus, *Fischer* not only teaches away from the combination proposed by the Examiner, but the proposed combination would render *Fischer* unsatisfactory for its intended purpose, and entirely change the principle of operation of *Fischer*.

Fischer also identifies an "important advantage" of the invention being that the hinged lid can be easily operated in the stack, with the result that the containers can conveniently be loaded and unloaded in the horizontal position. As discussed above, clamping rings cannot be used with a hinged lid. Even if the container and lid were somehow modified to accept the clamping ring, the fact that a user would need to align sealing rings and grooves to detach the clamping ring, would not allow the "important advantage" to the invention, which is the ability to be easily operated in the stack.

The Examiner's Answer indicates that "Appellant's remarks regarding motivation have very little detail." See *Examiner's Answer, Page 9, first and second paragraphs*. Appellant simply contends that the Examiner failed to provide a teaching, suggestion or motivation to combine the references, and not such teaching, suggestion or motivation exists. In response, the Examiner's Answer merely states potential advantages of the proposed combinations, without indicating where such suggestion, teaching or motivation exists.

103 REJECTION OF FISCHER IN VIEW OF SEITZ

Seitz does not disclose, teach or suggest each of the limitations of Claims 25 and 46. For example, the Examiner's Answer relies upon Figure 2 of *Seitz* in rejecting Claims 25 and 46. However, ring 14 of Figure 2 of *Seitz* does not illustrate a backing ring that contacts "a side of the first flange . . . and being operable to support the first flange." Instead, ring 14 of *Seitz* contacts a gasket 16. Thus, the ring of Figure 2 of *Seitz* does not contact the flange and does not support the flange, as suggest by the Examiner's Answer.

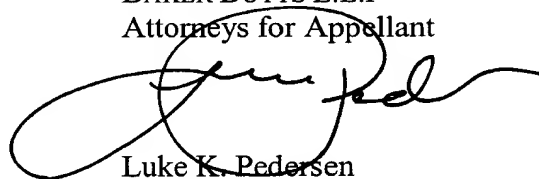
CONCLUSION

Appellant has demonstrated that the present invention, as claimed in Claims 24-26, 28-37, and 43-47, is patentably distinct from the references of record in this Application. The Examiner's Answer does not in any way controvert Appellants' showing. Accordingly, Appellants respectfully request the Board to reverse the Examiner's final rejection of Claims 24-26, 28-37, and 43-47 and to instruct the Examiner to issue a Notice of Allowance of these Claims.

Although Appellant believes no fee is due in connection with this Reply Brief, the Commissioner is hereby authorized to charge any fee or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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